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No. 87-1990

Supreme Court, U.S.
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IN THE
Supreme Court of the United States
OCTOBER TERM, 1988

RICHARD F. BODDIE,
Petitioner,
v.

DANIEL G. FAISON, *et al.*

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the District of Columbia Circuit

BRIEF FOR RESPONDENTS IN OPPOSITION

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August 5, 1988

QUESTION PRESENTED

Whether a court of appeals may, consistent with the Seventh Amendment, interpret a jury's intent in light of inconsistent jury instructions and special verdict forms.

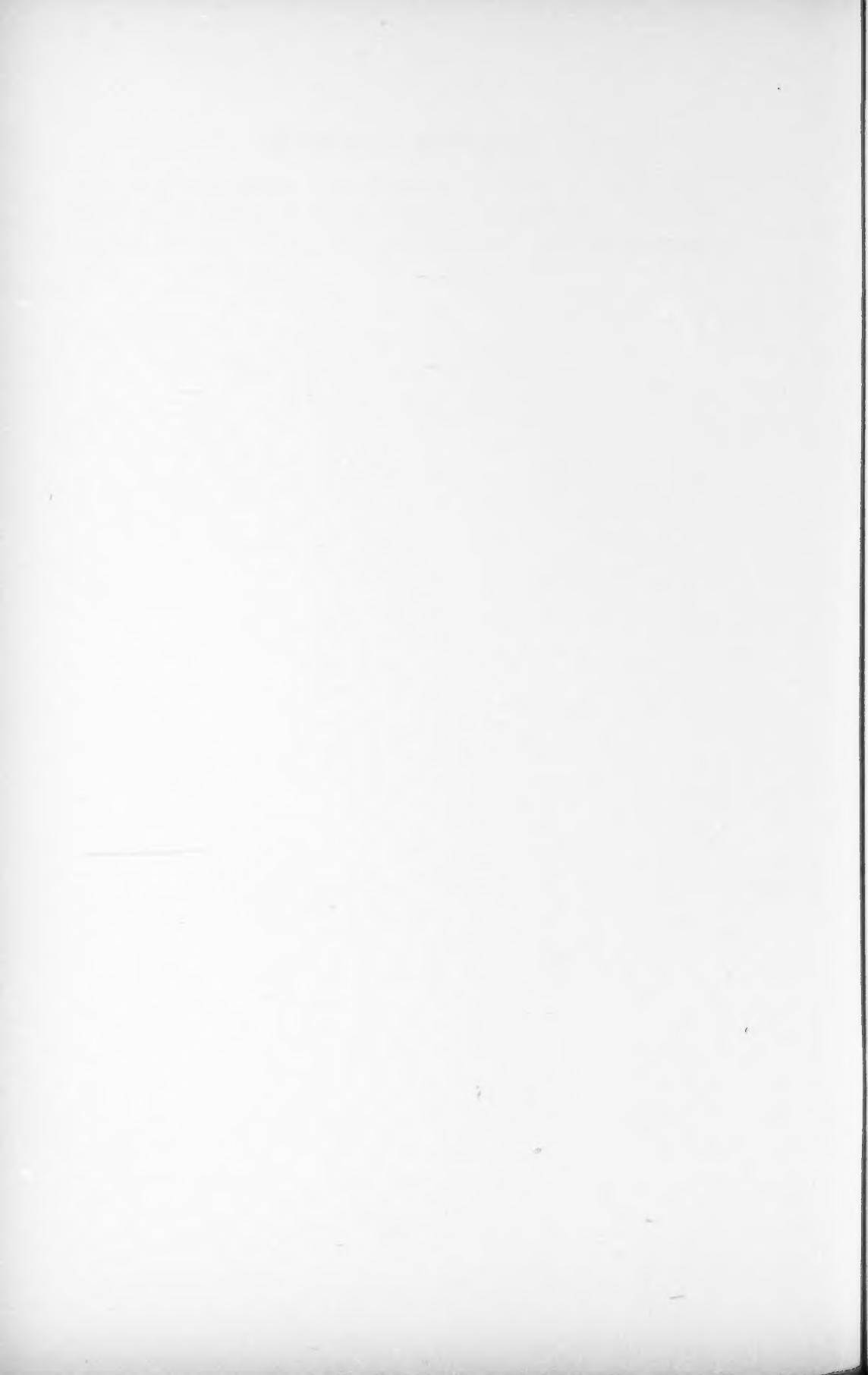


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OPINIONS BELOW

The opinion of the court of appeals, including its decision on panel rehearing (Pet. App. 1a-30a), is reported at 839 F.2d 680. The judgment of the district court (Pet. App. 31a-34a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on October 30, 1987 (Pet. App. 1a), and revised on petitioner's request for rehearing on March 4, 1988. Pet. App. 27a. The petition for a writ of certiorari was filed

on June 2, 1988. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT

Petitioner, Richard F. Boddie, engaged in a scheme to defraud Daniel and LaShavio Faison out of their home. Specifically, Mr. Boddie played an instrumental role in luring the Faisons, who were attempting to obtain a second mortgage on their home, into accepting a one-year "balloon" note bearing a true interest rate of approximately seventy-five percent secured as a second trust on their home. After losing their home in the ensuing foreclosure, Mr. and Mrs. Faison brought suit in the district court alleging, *inter alia*, fraud against Mr. Boddie and his confederates. The jury, instructed as to joint ventures, nonetheless was presented with special verdict forms which requested that the jury state not the amount of damages the Faisons sustained, but instead the amount of damages each defendant would have to pay. Nonetheless, the jury unambiguously found that Mr. Boddie and his five codefendants had defrauded the Faisons, and the jury found that the Faisons were entitled to at least \$100,000 in compensatory damages for the single injury resulting from this fraud—the loss of their home.

On the parties' cross-appeals, the court of appeals held that Mr. Boddie was jointly and severally liable to the Faisons as a matter of law. Accordingly, the court held that because the minimum amount the jury considered adequate to compensate the Faisons was \$100,000, Mr. Boddie was fully liable for that amount. Mr. Boddie now seeks review in this Court contending that the court of appeals' interpretation of the jury's intent violates the Seventh Amendment.

1. Mr. Boddie's involvement in the scheme to defraud the Faisons was substantial. Although not licensed to

practice law in either the District of Columbia or Virginia (the location of the property and place of settlement, respectively), Mr. Boddie acted as the settlement attorney who carried out the fraudulent transaction and misled the Faisons about its terms. From the onset, Mr. Faison wanted to obtain a second mortgage on his home so that he could make repairs to his house, including his roof and heating plant, and so he could pay off some personal bills. Mr. Faison was approached by a broker for Nationwide Mortgage Corporation, who advised him that he could arrange such a loan on either a five, ten or fifteen year term. While Mr. Faison needed only \$10,000, Mr. Boddie's confederates encouraged Mr. Faison to borrow \$14,000, ostensibly on a five year term.

While Mr. Faison's need for the loan was strictly personal, Mr. Boddie and others advised Mr. Faison to state that the loan was intended for business purposes. The effect of this misrepresentation, which was not explained to Mr. Faison, was to bring the loan outside the protections of the Truth in Lending Act, 15 U.S.C. § 1603(1). Thus it was not until the day of settlement that Mr. Faison learned that he would receive only \$7,324.94 of the \$14,000 he had borrowed (the remainder going to discount fees, brokerage fees, settlement costs and Mr. Boddie's attorney fees), and even then Mr. Faison was never informed that the true interest rate on this loan was not 18% as represented by Mr. Boddie, but instead closer to 75%. While Mr. Faison was told that the loan he had obtained was a one year balloon note, rather than the five year second trust he had wanted, he was assured that refinancing of the loan would be immediately available, and, indeed, that he would receive the remainder of his \$14,000 upon refinancing. In fact no refinancing was forthcoming, even though to the very day of foreclosure (in which Mr. Boddie represented the lender) Mr. Boddie and other codefendants impressed upon Mr. Faison that the loan would be refinanced. On August 30, 1983, just

thirteen months after Mr. Boddie's settlement of the loan, the Faisons lost their house.

2. The jury returned a verdict finding fraud by all defendants, including Mr. Boddie. Inconsistent with the instructions concerning joint ventures, however, the jury was presented with special verdict forms which elicited separate damages awards against each defendant. Thus, the jury awarded compensatory damages of \$100,000 against Nationwide Mortgage (and its president), a total of \$3,000 against the brokers who solicited the Faisons' loan, \$2,100 against the investor who actually supplied the capital, and \$5,000 against Mr. Boddie. (The jury also separately awarded a total of \$63,500 of punitive damages against all of these defendants, of which \$7,000 was awarded against Mr. Boddie.)

On the parties' cross-appeals, the court of appeals held that notwithstanding the jury's assessment of damages against the individual defendants, in the District of Columbia Mr. Boddie and his codefendants were jointly and severally liable as a matter of law. The Faisons suffered a "single indivisible result—the loss of their home." Pet. App. 13a. Under District of Columbia law, "multiple defendants found liable for a single injury are deemed to be joint tortfeasors, and any compensatory damages for that single injury must be awarded jointly and severally against them." Pet. App. 12a. See also, *Leiken v. Wilson*, 445 A.2d 993, 999 (D.C. 1982). The court concluded, therefore, that Mr. Boddie must be held to answer fully for the Faisons' losses.

District of Columbia law precluded the court of appeals from holding all the defendants jointly and severally liable for the cumulative amount found by the jury against each defendant. *Greet v. Otis Elevator Co.*, 187 A.2d 896, 898 (D.C. 1963). Recognizing that a new trial, even if limited to the issue of compensatory damages, would be unduly burdensome, the court instead ordered that defendants be jointly liable for the largest amount

awarded against any defendant individually—\$100,000. Pet. App. 15a. It may have been speculative whether the jury would have awarded the total \$110,100 damages were it not for the special verdict forms; it was certain, however, that the jury found that the damages the Fasons sustained as a result of the loss of their home were at a minimum \$100,000. Accordingly, rather than order a new trial on the issue of damages, the court of appeals remanded the case to the district court with instructions to enter a judgment against all defendants jointly and severally in the amount of \$100,000.

3. Mr. Boddie timely requested rehearing of the panel's decision, alleging, among other things, that there was insufficient evidence to support the verdict of \$100,000. Because the issue was never questioned at trial (judgment had been taken against Nationwide Mortgage and its president by default), the court of appeals granted Mr. Boddie's request and remanded the case to the district court with instructions to consider Mr. Boddie's challenge to the sufficiency of the evidence and, if it found it meritorious, to order *remittitur* or a new trial on the issue of damages. Mr. Boddie's motion for a new trial is currently pending in the district court.

REASONS FOR DENYING THE WRIT

This petition presents questions that are peculiarly limited to the facts of this case and that do not raise issues of substantial public concern. The court of appeals' conformance of the judgment to the jury's obvious intent was a routine exercise of that court's authority which was, rather than violative of the Seventh Amendment, indeed commanded by it. Moreover, as the court of appeals remanded this case to the district court for consideration of the sufficiency of the evidence, this case is not presently in an appropriate posture for review by this Court. For these reasons, the petition should be denied.

1. The jury found that Mr. Boddie, and each of his confederates, had defrauded the Faisons. The minimum amount the jury found necessary to compensate the Faisons for this fraud was \$100,000. The court of appeals held that all the defendants, including Mr. Boddie, were jointly and severally liable as a matter of law. Thus the court of appeals held that Mr. Boddie was jointly and severally liable to the Faisons for the full \$100,000.

Mr. Boddie contends that the court of appeals violated his Seventh Amendment right to trial by jury because the net result of its decision was an increase in his liability from that originally assessed against him individually by the jury. Thus, apparently reading *Dimick v. Schiedt*, 293 U.S. 474 (1935), as creating an absolute rule that a jury verdict against an individual may not in any circumstances be increased, Mr. Boddie suggests that the court engaged in an impermissible *additur* in violation of the Seventh Amendment.

The Seventh Amendment does not require such talismanic adherence to verdict forms. Rather, the constitutional imperative is to respect the jury's *intent*; i.e., for a court to endeavor, whenever possible, to harmonize inconsistent verdicts and to give full force to the jury's findings. *Gallick v. Baltimore & O. R. Co.*, 372 U.S. 108, 119 (1963); *Aquachem Co., Inc. v. Olin Corp.*, 699 F.2d 516, 521 (11th Cir. 1983). Mr. Boddie suggests that the court of appeals could not discern the jury's intent, but indeed the jury's intent was manifest: each of the defendants, including Mr. Boddie, defrauded the Faisons and at least \$100,000 in damages was necessary to compensate for their injury.* The court of appeals merely

* It may be that the jury believed that more than \$100,000 (i.e. the aggregate \$110,100 awarded against all defendants) was necessary to fully compensate the Faisons, but the court of appeals refused to so speculate. See Pet. App. 14a. What can be said to a certainty about the jury's determination of the Faisons' overall injury is that it could not have been any less than what the jury

concatenated the jury's finding of fraud, the establishment of joint and several liability as a matter of law, and the jury's finding of a minimum of \$100,000 compensatory damages due to determine that Mr. Boddie was jointly and severally liable for this amount. The Seventh Amendment did not prohibit the court from so conforming the judgment to the jury's intent; to the contrary, it required it. *Atlantic and Gulf Stevedores, Inc. v. Ellerman Lines, Ltd.*, 369 U.S. 355, 364 (1962).

Similarly, Mr. Boddie's suggestion that the decision below is inconsistent with *Dimick v. Schiedt*, 293 U.S. 474, is incorrect. In *Dimick*, this Court recognized that the critical distinction between *additur* and *remititur* for Seventh Amendment purposes is that in the former the jury has never passed on the greater amount. *Id.*, at 485. This, of course, cannot be said here, for the jury explicitly found that the injury to the Fasons was at least \$100,000. The jury having awarded damages in at least this amount, Mr. Boddie cannot be heard to complain that the court impermissibly added to the jury's verdict when he was jointly and severally liable as a matter of law.

Moreover, while this situation has arisen only rarely, the decision below comports with the other courts' treatment of this issue. See e.g. *G. A. Thompson & Co., Inc. v. Partridge*, 636 F.2d 945, 963-64 (5th Cir. 1981) (affirming increase of judgment to reflect joint and several liability in amount four times greater than the jury awarded against each of four defendants); *Geosearch, Inc. v. Howell Petroleum Corp.*, 819 F.2d 521, 527-28

awarded against any individual defendant. Thus the jury's individual assessment of \$100,000 compensatory damages against Nationwide Mortgage established to a certainty the minimum the jury intended to award. To suggest that the jury would have found less had it properly awarded damages jointly and severally is to suggest that the jury would have ignored its instructions and impermissibly compromised liability and damages.

(5th Cir. 1987) (affirming increase of jury award to offset reduction for comparative negligence improperly computed by jury). While different fact situations command different results, there is no split of authority on the underlying principles which guide the courts' determinations.

The decision below raises no novel points of law nor does it conflict with decisions of this Court or the other courts of appeals. Accordingly, the petition should be denied.

2. The court of appeals held that all the defendants were jointly and severally liable for the full amount of the \$100,000 judgment. Originally, however, the \$100,000 verdict was levied only against Nationwide Mortgage and its president. Mr. Boddie requested rehearing of the court of appeals' decision, asserting that the evidence was insufficient to support the \$100,000 verdict. Since no one had standing to raise this objection in the trial court, (judgment had been taken by default against Nationwide Mortgage and its president, who did not appear in deference to his Fifth Amendment rights), the court remanded the case to the district court for consideration of Mr. Boddie's challenge to the sufficiency of the evidence and possible *remittitur* or retrial on the issue of damages. Mr. Boddie's motion is currently pending in the district court.

The interlocutory nature of this petition renders it especially inappropriate for review at this time. *Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916). If, as Mr. Boddie has requested, the district court grants a new trial on the issue of damages, his objections to the court of appeals' decision will become moot. Moreover, if the district court offers a *remittitur*, it may be that Mr. Boddie would no longer care to press his arguments. Simply, "because the Court of Appeals remanded the case, it is not yet ripe for review by this Court." *Brotherhood of Locomotive Firemen and Engine-*

men v. Bangor & Aroostook R. Co., 389 U.S. 327, 328 (1967). The petition does not present any question of law essential to further determination of the case. Nor does it present issues of law so extraordinary or fundamental that review would be warranted notwithstanding its interlocutory posture. Accordingly, the petition should be denied.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit should be denied.

Respectfully submitted,

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